THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.5306 of 1999

Dated : 26.04.2007

Between:

T.Venkataramana S/o late Sri Ramaiah

... **PETITIONER**

And:

The Bar Council of Andhra Pradesh,
High Court Buildings, Hyderabad and others.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.5306 of 1999

ORDER:

This writ petition is filed seeking to quash Complaint Case No.112 of 1998 registered against the petitioner and also to direct the second respondent not to proceed further in the said complaint against the petitioner.

The case of the petitioner is that he was enrolled as an Advocate in the year 1962 and has been practicing in Andhra Pradesh High Court. He has been discharging his duties as an advocate to the best of his ability to the complete satisfaction of his clients and with utmost respect to the Courts and Tribunals. While so, he received a notice from the second respondent in Complaint Case No.112 of 1998 calling upon him to be present before it on 31.01.1999 at 11.00 A.M., for enquiry under Section 35(1) of the Advocates Act, 1961 (for short "the Act"). The said case was alleged to have been registered against the petitioner on the basis of the statements said to have been made by respondents 3 and 4 before the first respondent on 28.11.1998 to

the effect that the petitioner requested respondents 2 and 3 through telephone to support the complaint in C.C.No.40 of 1998 filed against one Sri E.Maruthi Raja, an Advocate. The petitioner was asked to submit statement of defence together with any documents in support thereof. Thereafter, petitioner filed a petition on 31.12.1998 before the second respondent requesting to furnish copies of documents, such as complaint, statements of defence, oral statements said to have been made by respondents 3 and 4 before the first respondent, copies of the decision taken by the first respondent, etc., filed in C.C.No.40 of 1998. Petitioner also sought extension of time for filing the defence statement and documents, and also requested the second respondent to furnish the said documents. Thereupon, the second respondent directed its Registrar to obtain separate application from the petitioner for furnishing the certified copies on payment of costs and extended time upto 20.02.1999. Accordingly, petitioner filed an application on 08.02.1999 for furnishing the copies of documents along with the requisite fee, and the second respondent furnished copies of documents sought by the petitioner, except the copies of statements of respondents 3 and 4 or the copies of documents filed in Complaint Case No.112 of 1998 or the decision taken by the first respondent in both the complaints. According to the petitioner, he has gone through the said documents and there is no allegation against him. Therefore, he intended to file a writ petition seeking to quash the said complaint, and in that view of the matter, submitted an application 20.02.1999 to the second respondent seeking two weeks time for filing a writ petition, and accordingly time upto 20.03.1999 was granted. Hence, this writ petition.

Despite service of notice, respondents have not chosen to file any counter.

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for respondents 1 and 2.

Learned counsel for the petitioner submits that the first respondent registered the said complaint against the petitioner without there being any material, at the instance of respondents 3 and 4 and other members of the first respondent, who were inimical towards him and that there is no evidence on record about the alleged statements said to have been made by respondents 3 and 4 against the petitioner. He further submits that though the first respondent has been providing an opportunity to the advocate against whom any complaint is made to file his defence statement before initiating any action, no such procedure is followed in this case before registering the complaint, and that the petitioner never requested respondents 3 and 4 to support the complaint filed in C.C.No.40 of 19998 nor was he behind the same and that only in order to harass the petitioner the said complaint has been registered.

Per contra, learned standing counsel for respondents 1 and 2 submits that as the statements made by respondents 3 and 4 prima facie made out a case against the petitioner, the first respondent registered the said complaint against the petitioner and therefore, the same is not liable to be quashed.

Before dealing with the rival contentions, it is pertinent to refer to the relevant provisions of Law. Chapter V of the Act deals with conduct of Advocates and Section 35 of the Act deals with punishment of advocates for misconduct. Sub-section (1) of Section 35 of the Act states that the State Bar Council may, either of its own motion or on an application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee of that State and direct inquiry to be made by any other disciplinary committee of that State Bar Council.

Section 49 of the Act deals with general power of the Bar Council of India to make rules. The procedure to be followed by the disciplinary committee of State Bar Council and its own disciplinary

committee is prescribed under Section (1)(f) of Section 49 of the Act. Chapter I of Part VII of the Bar Council of India Rules (for short "the Rules") deals with the procedure to be followed by disciplinary committees of the State Bar Council and the Bar Council of India. Rule 2 of the Rules reads thus:

> "Before referring a complaint under Section 35(1) of the Act to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complainant to furnish within a time to be fixed by it, further and better particulars and may also call for comments from the Advocates complained against."

Coming to the facts on hand, it is clear that the State Bar Council did not adhere to the said Rules. Evidently, Complaint Case No.40 of 1998 was registered against one Advocate, by name Sri Maruti Raja, at the instance of a client-Murali Mohan, which was thereafter referred to the disciplinary committee for enquiry and disposal. When the matter stood thus, now the complaint made against the petitioner is that he made phone calls to respondents 3 and 4 and requested them to support the complaint registered against the said Advocate. From the above it is clear that already the Bar Council had taken a decision and initiated proceedings under Section 35(1) of the Act against the said Advocate-Maruti Raja. So, even in the absence of any request by the petitioner herein, the Bar Council is proceeding against the said Advocate. Further, as stated above, the action initiated against the petitioner can definitely be said to be contrary to Rule 2 of the Rules, as it is evident that there was no complaint in writing and it was only on the alleged information given by respondents 3 and 4 that the petitioner telephoned to them, action against the petitioner was initiated.

Further, according to the learned counsel for the petitioner, initiation of proceedings against the petitioner is biased and the same is not controverted by any of the respondents, as no counter affidavits are filed. Hence, this Court has no option but to accept the same.

In the light of the above, this Court has no hesitation to come to the conclusion that initiation of proceedings in complaint case No.112 of 1998 against the petitioner is violative of principles of natural justice and the proceedings are liable to be quashed.

Accordingly, the writ petition is allowed and Complaint Case No.112 of 1998 registered against the petitioner and consequent proceedings initiated against him are hereby quashed. There shall be no order as to costs.

_____

26.04.2007

sh